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PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

To the notifying party

Subject: **Case M.9790 – Blackstone/KP1**
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1] and Article 57 of the Agreement on the European Economic Area[2]

Dear Sir or Madam,

(1) On 19 June 2020, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the Blackstone Group Inc. ("Blackstone", US) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of the whole of KP1 Services S.A.S. ("KP1", France) and its subsidiaries (hereafter, "KP1 Group"), currently controlled by Doughty Hanson Private Equity Partners, by way of purchase of securities[3] ('the Transaction'). Blackstone and KP1 are designated hereinafter as 'the Parties'. The entity resulting from the Transaction is hereinafter referred to as the 'Merged Entity'.

1 OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

2 OJ L 1, 3.1.1994, p. 3 (the "EEA Agreement").

3 Publication in the Official Journal of the European Union No C 216, 30.6.2020, p. 23.

Commission européenne, DG COMP MERGER REGISTRY, 1049 Bruxelles, BELGIQUE
Europese Commissie, DG COMP MERGER REGISTRY, 1049 Brussel, BELGIË

Tel: +32 229-91111. Fax: +32 229-64301. E-mail: COMP-MERGER-REGISTRY@ec.europa.eu.

1. THE PARTIES

(2) Blackstone is a global asset manager operating as an investment management firm headquartered in the United States, with offices in Europe and Asia.

(3) KP1 is active in the development, design, manufacture, and sale of construction materials for residential, commercial, and industrial purposes in France.

2. THE OPERATION

(4) On 31 March 2014, KP1 entered into a trust deed (the "Trust Deed") that entitled Blackstone to be the holder of […] senior secured guaranteed notes of the KP1 Group due 31 March 2021 (the "Notes"). [Details on KP1 financial situation]. Accordingly, KP1 and Doughty Hanson, the ultimate shareholder of KP1, commenced negotiations with Blackstone in early 2020 with a view to agreeing a consensual recapitalization and restructuring of KP1. On 15 May 2020, Doughty Hanson and Blackstone entered into a binding lock-up agreement and a term sheet, under which at the closing of the Transaction (i) 100% of the equity in KP1 will be transferred to Blackstone for […]; and (ii) Blackstone's claims under the Trust Deed will be exchanged for reinstated debt in the amount of […] of notes issued to Blackstone.

(5) Following the implementation of the proposed Transaction, funds managed by affiliates of Blackstone will become the sole shareholder of the KP1 Group. The proposed Transaction is therefore a concentration pursuant to Article 3(1)(b) of the Merger Regulation.

3. EU DIMENSION

(6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[4] (Blackstone: […], KP1: […]). Each of them has an EU-wide turnover in excess of EUR 250 million (Blackstone: EUR […] , KP1: EUR […]), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State. The notified operation therefore has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

4. RELEVANT MARKETS

4.1. Introduction

(7) The Transaction creates a vertical link in France between the activities of KP1 and Building Materials Europe ("BME"), a Blackstone controlled portfolio company active in the distribution of building materials in the Netherlands, Germany, Belgium, Austria, France, Portugal and Switzerland.

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4 Turnover calculated in accordance with Article 5 of the Merger Regulation and the Commission Consolidated Jurisdictional Notice (OJ C 95, 16.4.2008, p. 1).

(8) In France, BME is only active within two regions, namely Ile-de-France and North/Normandie, through its own branded chains Raboni, acting as a general builders merchant[5] ("GBMs"), and Busca, acting as a specialist builder merchant[6] ("SBMs"). BME distributes (i) basic building materials to professional customers *via* Raboni and (ii) sanitary, heating and plumbing products *via* Busca.[7]

(9) KP1 is a French manufacturer of prefabricated concrete and non-concrete components, focusing on floors and structural systems for both residential and commercial buildings.[8] KP1 sells its products in France to: (i) retailers, specifically to general builders' merchants (such as BME's […]* business);[9] and (ii) directly to professional end-customers.[10]

(10) The Transaction does not lead to horizontal overlaps. Firstly, BME does not supply building materials at wholesale level like KP1 does. Secondly, the products KP1 sells directly to end-customers are for use in multi-dwelling houses and non-residential constructions, whereas the similar products sold by GBMs (like BME's […]** business) at retail level are aimed for individual houses;[11] hence, there is no competition between KP1 and BME in sales to end-customers.[12]

(11) Conversely, the Transaction gives rise to a vertical link between KP1 acting as a producer and wholesale supplier, on the one hand, and BME acting as a GBM (with its Raboni business) at retail level.

4.2. Market definitions

4.2.1. Upstream market: the wholesale supply of precast concrete components to retailers

4.2.1.1. Product market definition

(12) Precast concrete products are extremely diverse and comprise ready-made pillars, beams, joists, road barriers, containers, railway sleepers and blocks for house

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5 GBMs provide their customers with a one-stop shopping facility and related advice for the entire range of different products.

6 SBMs typically concentrate only on one product segment and they typically offer their customers greater expertise in this segment than GBMs.

7 BME does not operate DIY stores in France and sales to non-professional customers are immaterial (Form CO, paragraph 96).

8 Form CO, paragraph 64.

* Should read: "Raboni"

9 In France, the retail of building materials has been defined as "*a traditional activity by which retailers sell on stock all the materials necessary for construction companies*." This activity consists in supplying a large assortment of materials which are often needed to undertake a construction project. Building materials are intended mainly for professional customers, which implies specialization in the organization of the distribution of products, as well as in the width and depth of the ranges of materials offered. DIY stores by contrast are mainly aimed at non-professional customers. See decision from the French Minister of the Economy from 5 September 2002, Carmat - Pinault Bois et Materiaux; Decision from the FCA, 15-DCC-29, SAMSE / SC Inv, 19 March 2015.

10 End-customers include "structural companies" (such as Eiffage, Bouygues) and "contractors" (such as Lidl, Carrefour, Pomona, FM Logistic, Leroy Merlin) which represented 46% and 12% of KP1's 2019 turnover respectively.

** Should read: "Raboni"

11 Form CO, paragraph 67.

12 Form CO, paragraphs 96 and 98.

construction.[13] KP1 manufactures (i) *standard concrete elements* (such as pre-stressed floor beams[14], lintel and standard beams, lightweight PP infiller elements and insulating EPS infiller blocks[15], and thermal bridge breakers,[16]); (ii) *bespoke precast elements* (such as pre-stressed and reinforced pre-slabs, double walls, hollow-cores and pre-stressed beams) and (iii) *frameworks and pre-stressed concrete turnkey solutions*. Specifically, BME sells through the Raboni chain *standard concrete elements* manufactured by KP1, primarily for residential use. For regulatory reasons, KP1's infiller blocks and thermal bridge breakers can be used only in conjunction with KP1's floor beams, though not all floor beams require such products.[17]

(13) The Commission has previously assessed various product markets in the building materials sector such as masonry building materials,[18] ready-mixed concrete,[19] mortar,[20] aggregates,[21] asphalt,[22] concrete and precast concrete walling units.[23] With respect to prefabricated (or precast) concrete components, the Commission has previously identified a relevant market for precast concrete products distinct from other construction materials such as ready-mixed concrete, aggregates, and cement. Specifically, the Commission analysed a potential market for precast concrete products noting that these products are extremely diverse and comprise ready-made pillars, beams, joists, road barriers, containers, railway sleepers, and blocks for house construction, but ultimately left the exact market definition open.[24]

(14) In the wholesale segment, the Commission previously analysed the impact of various transactions on a product-by-product basis.[25] However, the Commission left open the exact product market definition with respect to these products, while also noting that

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13 Commission decision of 7 August 2007, HEIDELBERGCEMENT/HANSON (M.4719), paragraph 24.

14 Pre-stressed concrete is a form of concrete used in construction. It is substantially "pre-stressed" (compressed) during production, to strengthen it against tensile forces which it will experience when in service. Pre-stressed beams allow the realization of a wide range of floors with various characteristics depending on the products which they are associated with.

15 Polystyrene (PP) and expanded polystyrene (EPS). Infiller blocks are a layer of filler placed between the joists of a floor and serve as formwork for the floor. They are supported by beams and are covered with a welded mesh and a concrete compression slab.

16 A thermal bridge breaker is a structural thermal insulation device specially designed to treat thermal bridges mainly at the slab / facade or slab / balcony junctions. The purpose of the product is to reduce heat leaks.

17 The junction between the infiller block and the beam is essential to ensure that the beam and the compression slab "work together". This junction is either defined in a lump sum (overestimated) or in the context of a technical notice. This is the case for KP1 solutions and certification of KP1's non concrete infiller blocks is linked to the profiles of its beams.

18 Commission decision of 29 March 2017, Lone Star Fund/Xella International (M.8341), paragraphs 15-29.

19 Commission decision of 15 December 2014, HOLCIM/LAFARGE (M.7252), paragraph 10.

20 Commission decision of 22 July 2015, COMPAGNIE DE SAINT GOBAIN/ SIKA (M.7498), paragraph 28.

21 Commission decision of 15 December 2014, HOLCIM/LAFARGE (M.7252), paragraphs 323-333.

22 Commission decision of 15 December 2014, HOLCIM/LAFARGE (M.7252), paragraphs 379-383.

23 Commission decision of 26 June 2002, Haniel/Cementbouw/JV (M.2650), paragraphs 40-81.

24 Commission decision of 7 August 2007, HEIDELBERGCEMENT/HANSON (M.4719), paragraph 24.

25 Commission decision of 5 May 2019, LONE STAR - STARK GROUP/SAINT-GOBAIN BDD (M.9406).

the wholesale supply to retailers is upstream of the retail supply to professional customers and the retail supply to non-professional customers,[26] considering three main segments: (i) wholesale supply to retailers, (ii) retail supply to professional customers ("B2B"), and (iii) retail supply to non-professional customers ("B2C", primarily through do-it-yourself ("DIY") stores).[27]

(15) The Parties propose that the upstream market for present purposes should be the wholesale supply of precast concrete and non-concrete components to retailers.[28] The Parties confirmed[29] that, in view of regulatory considerations, both KP1 and its competitors who offer similar products to KP1's infiller blocks and thermal bridge breakers (which are the non-concrete components) do not sell them on a standalone basis, but sell them also only in conjunction with their own beams. In view of this, the Commission's assessment will focus specifically on the concrete components, in line with precedent.

(16) The results of the market investigation confirmed that "*Poutrelles Hourdis*", the local classification of infiller beams and blocks (pre-stressed concrete products), can be considered as a separate product market: "*En effet le marché de la poutrelle est un marché assez particulier*".[30] Also, a GBM retailer distinguished a "*pre-stressed concrete beams and infiller blocks*" market when he provided feedback on the impact of the Transaction.[31]

(17) In any event, for the purpose of this Decision, it can be left open whether the market for the wholesale of precast concrete components to retailers may be further segmented, as the Transaction does not give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement regardless of the precise product market definition.

4.2.1.2. Geographic market definition

(18) Regarding the wholesale supply of precast concrete components, the Commission has previously considered relevant markets to be national or regional in scope based on the catchment areas around the production plants of the products in question[32].

(19) In line with Commission's precedents, the Parties agree that the upstream market is national in scope. However, given that KP1 sells its products at the wholesale level in France to GBMs nationally and to BME's GBM chain, Raboni, which is active solely in two French regions, Ile-de-France and Normandie, the Parties submit that

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26 Commission decision of 5 May 2019, LONE STAR - STARK GROUP/SAINT-GOBAIN BDD (M.9406), paragraph 19.

27 Commission decision of 5 May 2019, LONE STAR - STARK GROUP/SAINT-GOBAIN BDD (M.9406), paragraph 19; Commission decision of 20 August 2015, PONTMEYER / DBS (M.7703), paragraphs 11-12.

28 Form CO, paragraph 96.

29 Response of 27 July 2020 to RFI 3.

30 "Indeed, the beams market is a rather specific market"; reply from 3 July 2020 to the Questionnaire to GBM retailers in France.

31 Reply from 3 July 2020 to the Questionnaire to GBM retailers in France.

32 Commission decision of 20 August 2015, PONTMEYER/DBS (M.7703), paragraph 17.

the impact of the Transaction should be assessed at both the national level and in Ile-de-France and Normandie.[33]

(20) The results of the market investigation confirmed that the geographic market is regional in scope based on the catchment areas around the production plants, as one supplier stated: "*In our product range of similar products, we can see that they can be delivered in a distance up to about 250 km from our factories, at an acceptable cost*".[34]

(21) In any event, the Commission leaves the markets definition (whether national or regional) open, since even under the narrowest market definition, the Transaction does not give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement.

4.2.2. Downstream market: retail sales of building materials to professional end-customers

4.2.2.1. Product market definition

(22) At the downstream retail level, the Commission has previously distinguished between sales to professionals by generalist retailers, on the one hand, and by specialist retailers, on the other hand, but left the precise market definition open[35]. KP1 does not sell its products to specialist retailers (SBMs) in France as it doesn't manufacture products that are inputs for SBMs.

(23) Also, the Commission previously considered a sub-segmentation by product group, including the specific product group of building materials.[36] Within this product group, a segmentation of building materials by product has generally been considered relevant by the Commission in instances where there have been horizontal overlaps between the parties in relation to particular product groups.[37]

(24) The Parties submit that the downstream relevant product market should be the retail sales of building materials to professional end-customers as KP1 sells its products in the retail channel only to GBMs.[38]

(25) For the purpose of this Decision, it can be left open whether the market for retail sales of building materials to professional end-customers may be segmented based on sales to GBMs or sales to SBMs, or based on the specific product group of building materials, as the Transaction does not give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement regardless of the precise product market definition.

(26) Finally, the Commission notes that as KP1 does not sell its products to specialist retailers (SBMs) in France[39], the Transaction does not lead to any horizontal

33 Form CO, paragraph 96.

34 Reply from 24 June 2020 to the Questionnaire to KP1 competitors in France.

35 Commission decision of 28 April 2004, SAINT GOBAIN / DAHL (M.3407), paragraphs 12-16.

36 Commission decision of 11 August 2014, Kingfisher/Mr. Bricolage (M.7283), paragraph 13.

37 Commission decision of 14 March 2018, LONE STAR/STARK (M.8733), paragraphs 10-24; Commission decision of 5 May 2019, LONE STAR - STARK GROUP/SAINT-GOBAIN BDD (M.9406), paragraph 54.

38 Form CO, paragraph 96.

overlaps or vertical links between the Parties on the market for the wholesale supply of precast concrete components to SBMs. Therefore, the SBM segment and the overall SBM and GBM segment (as it coincides with the GBM segment) are not discussed further in this decision.

4.2.2.2. Geographic market definition

(27) The Commission has previously considered that the geographic scope of the markets for retail sales of building materials to professional end-customers could be national, regional or local depending on the segment and the relevant catchment area but has ultimately left the question open.[40]

(28) The Parties state that the market for the retail supply of building materials to professional end-customers could be defined as national in scope given that competition on this market is driven by national elements (e.g., the main retailers compete nationally in terms of presentation, coverage, product offering, marketing and general policy). However, given that BME is active in only two regions of France, Ile-de-France and Normandie, the Parties agree that the Transaction should be assessed both at the national level and at regional level, for Ile-de-France and Normandie.[41] Given that the average radius in which BME customers typically source "Poutrelles Hourdis" is approximately 100 km, the Parties submit that the region is the appropriate geographical level to consider BME's position in the downstream market for the distribution of building materials in France.

(29) The results of the market investigation confirmed that the relevant geographic market is regional in scope and is limited at around 100 km from the delivery site, as a GBM retailer stated: "*as a general rule, the delivery distance from these platforms and branches does not exceed 100km (1h30 of driving for a standard delivery truck)*"[42].

(30) In any event, for the purpose of this Decision, it can be left open whether the market for the retail supply of building materials to professional end-customers is regional in scope, at the level of Ile-de-France and Normandie, or a 100 km radius from the delivery site, as the Transaction does not give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement regardless of the precise product market definition.

5. COMPETITIVE ASSESSMENT

5.1. Market structure in upstream markets

(31) The Parties estimate KP1's share in 2019 in the upstream markets for the wholesale supply of precast concrete components in France to be low ([5-10]% in value, [0-5]% in volume).[43]

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39 Form CO, paragraph 99.

40 Commission decision of 11 August 2014, Kingfisher/Mr. Bricolage (M.7283), paragraphs 17-22.

41 Form CO, paragraph 96.

42 Reply from 29 June 2020 to the Questionnaire to GBM retailers in France.

43 Form CO, paragraph 104.

(32) Within the narrower possible market for the wholesale of "Poutrelles Hourdis" to retailers, KP1 is estimated to have a value share of [20-30]% and a volume share of [10-20]% in France.[44]

(33) KP1 competes in the wholesale supply of precast concrete components in France with a number of other manufacturers. KP1's competitors in France include manufacturers of precast concrete components such as Rector Lesage, SEAC, Fabemi, NEO Planchers, Alkern, Spurgin Leonhart, and Strudal. From KP1's best estimates of shares for these competitors, Rector Lesage is the number 1 player with an approximately [20-30]% value share in the "Poutrelles / Hourdis" segment, followed by KP1 ([20-30]%), SEAC ([5-10]%), and Fabemi ([5-10]%). Other competitors together represent a [30-40]% share.[45] KP1's competitors also have production sites that aim to cover wholesales to retailers at a national level: Rector Lesage has 12 production sites, Fabemi has 13 production sites, SEAC has 25 production sites, NEO Planchers has 7 production sites, Alkern has 50 production sites, Spurgin Leonhart has 5 production sites.[46]

(34) At a regional level, the Parties estimate KP1 to have a market share in value for "Poutrelles Hourdis" sold to retailers of [30-40]% in the region of Ile-de-France and of [30-40]% in the region of North/Normandie.[47]

5.2. Market structure in the downstream market

(35) In the downstream market for retail sales of building materials to professional end-customers, BME's market share in value on the French GBM market is estimated by the Parties at [0-5]% in 2018.[48] At the regional level, BME's value share in the GBM market in 2018 is estimated at [5-10]% in Ile-de-France and [0-5]% in North/Normandie. Saint Gobain/Point P is the clear market leader in both regions with over [30-40]% market share.

5.3. Vertical assessment

5.3.1. Input foreclosure

(36) The Parties submit that KP1's share on the upstream market for the wholesale of precast concrete components to retailers is too small to sustain an input foreclosure strategy.[49] At the wholesale level, the Parties estimate KP1's market share for the wholesale supply of precast concrete components to retailers, in particular for "Poutrelles Hourdis", at approximately [20-30]%.

(37) On the two affected regional markets (wholesale of precast concrete components in Ile-de-France and Normandie), KP1's market shares for "Poutrelles Hourdis" sold to retailers also remain moderate: [30-40]% in the region of Ile-de-France and [30-40]% in the region of North/Normandie. There are alternative suppliers of precast concrete beams and infiller blocks in France, including in particular Rector

44 Form CO, paragraph 104.
45 Form CO, paragraph 108.
46 Form CO, paragraph 108.
47 Form CO, paragraph 110.
48 The Parties submit that 2019 shares will not differ significantly from 2018 shares.
49 Form CO, paragraph 120.

Lesage ([20-30]%), SEAC ([5-10]%), Fabemi ([5-10]%), Alkern, NEO Planchers and others have a combined market share of about [30-40]%. Most of KP1's competitors have manufacturing plants in or near the regions of Ile-de-France and Normandie and are able to supply retailers that compete with BME in these regions. This is the case in particular of Alkern, which has 9 manufacturing plants in or near Normandie and Ile-de-France, SEAC with 3 manufacturing plants in Ile-de-France and 4 other plants nearby; Rector Lesage with one plant in Normandie and one near the region Ile-de-France. BME currently also purchases products of the type manufactured by KP1 from Rector Leage, SEAC, and NEO Planchers.[50]

(38) According to the Parties, KP1's products are not "must-have" and not even a significant input for retailers of building materials.[51] The Parties submit that KP1's products do not constitute an important input for BME or Raboni. Specifically, KP1 products accounted for less than […]% of Raboni's sales in 2019 (approximately EUR […] out of EUR […]). The Parties further submit that KP1's products represent a similarly low share of sales of BME's competitors and, generally, that KP1 products are not "must have" products for GBMs. Further, the Parties submit that architects and builders that specify KP1 products in their building plans frequently also specify products of KP1's rivals. As architects and builders aim to serve their final customers at competitive prices, they would likely switch to more readily available products if the Merged Entity were to restrict its sales to BME.[52]

(39) Also, the Parties state that it is important for GBMs to have in their portfolios a wide range of products to fulfill all of their customers' requirements and allow one-stop-shopping. Builders typically purchase a wide range of products from GBMs such as BME over the course of building a house for the simple reason that house construction requires a large variety of products.[53] In 2019, BME generated a turnover of €[…] from the retail sales of building materials through its Raboni network, but less than €[…] (i.e., less than […]%) from precast concrete components as a whole and less than €[…] from precast concrete components from KP1.[54]

(40) In addition, as BME's share of the downstream market for the distribution of building materials to professional end-customers in France is *de minimis* – less than [0-5]% at the national level, KP1 currently relies significantly more on downstream distributors other than BME for the sale of its products. BME alone (€[…]) currently represents less than […]% of KP1's overall sales and less than […]% of KP1's sales to retailers.[55] Stopping its sales to other GBMs and selling exclusively to BME is likely to drastically reduce the sales of KP1's products as it seems unlikely that BME could take over a large part of the sales of its competitors due to such strategy, and sell all these products in only two regions of France. For the same reasons, it is unlikely that KP1 would have the ability or the incentive to successfully raise rivals' costs in relation to the products supplied by BME.

50 Form CO, paragraph 111.
51 Form CO, paragraphs 124-126.
52 Reply of 13 July 2020 to RFI 2.
53 Form CO, paragraph 125.
54 Form CO, paragraph 124.
55 Form CO, paragraph 133.

(41) The market investigation revealed that only one of the responding BME competitors has specific concerns related to the Transaction. This competitor operates GBM stores in the Ile-de-France and Normandie regions, as well as in other regions of France. It states that with respect to precast concrete, KP1 is currently its sole supplier[56] in the Ile-de-France and Normandie regions. Its concern is that post-Transaction, the Merged Entity may charge higher prices to it than to its own GBM branch (BME), making it impossible for the competitor to still profitably sell precast concrete components in the two regions in question.

(42) While the competitor states that other GBM chains work with products from KP1 competitors, it also submits that it could not readily switch from KP1 products to competing products, referring to the necessity for investments and staff training.

(43) The Commission considers that it is unlikely that the Merged Entity would have the ability or incentive to engage in input foreclosure strategies on any of the plausible markets concerned.

(44) First, the Merged Entity would likely not have the ability to engage in such a practice. Firstly, KP1's market shares on the upstream market for the wholesale supply of precast concrete components are relatively limited and thereby limiting its ability to sustain an input foreclosure strategy.

(45) Second, the Merged Entity would likely not have the incentive to engage in such a practice. KP1 achieves the majority of its sales to retailers in French regions other than Ile-de-France and Normandie ([…]%). It is therefore unlikely that the Merged Entity would risk KP1's sales to GBMs outside of Ile-de-France and Normandie by refusing sales or offering disadvantageous conditions for any third-party GBMs inside these regions. Ultimately, GBMs with stores inside and outside of the Ile-de-France and Normandie regions could start switching away from KP1 products across France, if KP1 were to discriminate against their stores inside of the Ile-de-France and Normandie regions. Also, it can be noted that BME's market share on the retail market for building materials to professional end-customers in Ile-de-France and Normandie is limited (with [5-10]% and [0-5]% respectively), indicating that a possible input foreclosure strategy might not be profitable.

(46) In any event, the outcome of the market investigation indicates that there are generally no significant differences in "Poutrelles Hourdis" products sold by KP1 and its competitors. While for a GBM some investment or staff training may be necessary to start selling "Poutrelles Hourdis" from another manufacturer, this is unlikely to represent a prohibitive hurdle to switching away from KP1 products in case of a price increase or in case they were to become unavailable to a GBM.[57] As there are no barriers to entry in this market and there are enough competitors, even at regional level, it is unlikely that the Merged Entity would be able to raise prices in the downstream market thereby significantly impeding effective competition.

(47) Therefore, it is unlikely that the Merged Entity would have the ability or incentive to foreclose competitors to BME from input products. In particular, it is also unlikely

56 Reply from 14 July 2020 to the Questionnaire to GBM retailers in France.

57 Reply from 29 June 2020 to the Questionnaire to GBM retailers in France.

that it would have the ability or incentive to do so selectively inside of the Ile-de-France and Normandie regions.

(48) Overall, the outcome of the market investigation shows that the risk of input foreclosure through the notified concentration appears limited. It seems unlikely that, post-merger, KP1 would restrict access to its products by other GBMs and the outcome of the market investigation indicates that the Transaction in general does not seem to raise any input foreclosure concerns, as a GBM states: "*Regarding our relationships with KP1, the envisaged acquisition should not have any impact either, provided that in Ile-de-France and Normandie, the new partnership between KP1 and BME does not impact the balance of powers between the different actors operating on these markets in these specific geographic areas*"[58].

(49) In view of the above considerations and the information available to it and the results of the market investigation, the Commission considers it unlikely that, post-Transaction, the Merged Entity would have the ability or the incentive to successfully engage in input foreclosure strategies in relation to the products supplied by KP1.

5.3.2. Customer foreclosure

(50) The Parties submit that there is no risk of customer foreclosure resulting from the Transaction as the Merged Entity resulting from the Transaction will not have the ability to foreclose competing upstream suppliers from access to customers active on the downstream market.[59]

(51) The Commission considers that it is unlikely that the Merged Entity would have the ability or incentive to engage customer foreclosure practices.

(52) Firstly, the Parties state that BME's market share on the two affected regional markets remains low, at [5-10]% in Ile-de-France and [0-5]% in Normandie and BME's importance for reaching end-customers in these regions is not significant. In particular, BME will continue to face competition from Saint Gobain/Point P (which has more than [30-40]% share in each region); Tout Faire Materiaux ([0-5]% in Ile-de-France and [10-20]% in Normandie) which belongs to the purchasing group CMEM; BigMat ([5-10]% in Normandie and BigMat is also present in Ile-de-France); and Gedex (Gedimat) ([0-5]% share in Ile-de-France and [10-20]% in Normandie).[60]

(53) As BME does not have any significant market power in the downstream market, it is unlikely that the Merged Entity would be able to increase the cost of its upstream competitors to access downstream customers or restrict access to a significant customer base. Rather, restricting BME to selling only KP1's products would put BME at a competitive disadvantage to its downstream rivals, which would be able to offer customers a broader range of precast concrete products.[61]

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58 Reply from 29 June 2020 to the Questionnaire to GBM retailers in France.

59 Form CO, paragraphs 141 - 146.

60 Form CO, paragraph 143.

61 Form CO, paragraph 145.

(54) The outcome of the market investigation reveals that while one competitor to KP1 explains that the Transaction could incentivise BME to shift more of its offtake to KP1, the other competitors to KP1 that responded to the market investigation submit that they do not expect the Transaction to have an impact on the market or their business.[62]

(55) Specifically, one competitor to KP1 mentions that it expects to continue selling its product to BME, as BME likely has to sell more than one brand. It further notes that it is confident that it could also deliver its product via other retailers if it were to encounter difficulties selling through BME: *"I do not see any major impact:* (a) *on our business, we will still sell our products to Raboni and Busca as we specify our products and it is difficult to change such technical specifications; I suppose also that they need to sell more than one brand only; (b) no major issue as the market is quite fragmented and we could always deliver our product via other distribution network in case of difficulties to keep on selling via BME"*[63].

(56) Therefore, and in particular also due to the small market share of BME in the Ile-de-France and Normandie regions, the Merged Entity appears unlikely to be able or to have the incentive to engage in customer foreclosure for the wholesale supply of precast concrete components to retailers in Ile-de-France and Normandie.

(57) In view of the considerations in paragraphs (48) to (54) above and all evidence available to it, the Commission considers that it is unlikely that customer foreclosure will arise from the Transaction.

(58) In light of the considerations included in paragraphs (35) to (55) above and all evidence available to it, the Commission considers that the Transaction will not give rise to serious doubts as to its compatibility with the internal market or the functioning of the EEA Agreement due to vertical non-coordinated effects under any plausible market definition.

6. CONCLUSION

(59) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Executive Vice-President

62 Reply from 24 June 2020 to the Questionnaire to KP1 competitors in France. , Reply from 30 June 2020 to the Questionnaire to KP1 competitors in France.

63 Reply from 24 June 2020 to the Questionnaire to KP1 competitors in France.